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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0136]

[Docket 2012-0076; Sequence 63]

Federal Acquisition Regulation; Submission for OMB Review;

Commercial Item Acquisitions

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension, with changes, to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning the clauses and provisions required for use in commercial item acquisitions. A notice was published in the Federal Register at 78 FR 18349, on March 26, 2013.

Comments were received from two respondents.

DATES: Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit comments identified by **Information Collection 9000-0136, Commercial Item Acquisitions**, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000-0136, Commercial Item Acquisitions". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000-0136, Commercial Item Acquisitions" on your attached document.

- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW, 2nd Floor, Washington, DC, 20405-0001 .
- ATTN: Hada Flowers/IC 9000-0136, Commercial Item Acquisitions.

Instructions: Please submit comments only and cite Information Collection 9000-0136, Commercial Item Acquisitions, in all correspondence related to this collection. Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson,
Procurement Analyst, Office of Governmentwide Acquisition
Policy, GSA (202) 208-4949 or email at
michaelo.jackson@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Streamlining Act of 1994 included Title VIII, entitled Commercial Items. The title made numerous additions and revisions to both the civilian agency and Armed Service acquisition statutes to encourage and facilitate the acquisition of commercial items and services by Federal Government agencies.

To implement these changes, DoD, NASA, and GSA amended the Federal Acquisition Regulation (FAR) to include several streamlined and simplified clauses and provisions to be used in place of existing clauses and provisions. These clauses and provisions were designed to simplify solicitations and contracts for commercial items. The simplified clauses and provisions are used by Federal agencies to facilitate the acquisition of commercial items and services.

Pertinent to this information collection is the FAR provision at 52.212-3, Offeror Representations and Certifications-Commercial Items. The provision is among the representations and certifications that are available for

completion in the On-line Representation and Certification Application (ORCA). ORCA as a stand-alone system no longer exists; however, its functionality is incorporated into the System for Award Management (SAM).

B. Analysis of Public Comments.

Two respondents submitted public comments on the extension of the previously approved information collection. The analysis of the public comments is summarized as follows:

Comment: The respondent commented that the extension of the information collection contradicts the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

Response: In accordance with the Paperwork Reduction Act (PRA), agencies can request an extension to an existing OMB approved information collection. The PRA requires that agencies use the Federal Register notice and comment process, to extend the OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to the FAR provision at 52.212-3, Offeror Representations and Certifications-Commercial Items. The provision is among the representations and certifications that are available for completion in the ORCA function of the SAM database. This provision is required by statute. In

accordance with Section 8002 of Public Law 103-355

(41 U.S.C. 264), contracts for the acquisition of commercial items shall, to the maximum extent practicable, include only those clauses—

(1) Required to implement provisions of law or executive orders applicable to the acquisition of commercial items; or

(2) Determined to be consistent with customary commercial practice.

Not granting this extension would consequently eliminate a primary means of complying with this statutory requirement.

Comment: Two respondents commented that the agency did not accurately estimate the public burden challenging that the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden. One respondent commented that the "estimate of four responses per contractor per year is unrealistically low." The respondent also commented that if the estimate accounted for the totality of the information collection requirement, including recordkeeping, compiling and reporting, the burden hours would be six to ten hours per response. For this reason, the respondent asserted that the agency should reassess the estimated total burden hours and revise the estimate upward to be more accurate, as was done in FAR Case 2007-006. A second respondent commented that on average, the time burden is

approximately 215 hours per company, per response, for the end-to-end process. Further, both respondents commented that the estimate of 0.5 hours of burden per response was unrealistically low when considering the time and effort necessary for a company to gather the data.

Response: Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007-006 where an adjustment was made from the total preparation hours from three to 60. This change was made considering particularly the hours that would be required for review within the company, prior to release to the Government.

The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure

by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business.

Careful consideration went into assessing the estimated burden hours for this collection. It has been determined that an upward adjustment is not required at this time. The estimate of four responses per respondent is based upon contractor use of the ORCA function in SAM rather than the completion of representations and certifications for each solicitation/contract for which a vendor submits an offer. The ORCA function was developed to eliminate the administrative burden for contractors of submitting the same information to various contracting offices, and to establish a common source for this information to procurement offices across the Government. Prior to ORCA, prospective contractors were required to submit representations and certifications in paper form for each individual contract award. Under these conditions, a response rate of 20 to more than 100 times per year may have been necessary. However, using the ORCA function in SAM, a contractor can enter their representations and certification information once for use on all Federal contracts and solicitations. FAR 4.1201(a) requires prospective

contractors to complete electronic annual representations and certifications at the SAM Internet site in conjunction with required registration in the Central Contractor Registration (CCR) function in SAM. The representations and certifications are effective until one year from the date of submission or update to the ORCA function in SAM. For purposes of this information collection, initial data entry plus three updates per year was considered reasonable and was used to estimate the number of responses per respondent per year.

Subject matter experts were consulted to obtain additional information that helped in estimating the hours of burden per response. After reviewing the average estimated burden hours per response, and the respondent's comments to the burden hours per response in conjunction with consultation with subject matter experts, it has been determined that the estimate of thirty minutes (0.500), or approximately 10 minutes more than the original estimate of 0.312 published in the Federal Register at 75 FR 6668 on February 2, 2010, was a valid measure of the average time required to complete and review each response. However, at any point, members of the public may submit comments for further consideration, and are encouraged to provide data to support their request for an adjustment.

C. Annual Reporting Burden

Respondents: 162,000.

Responses Per Respondent: 4.

Total Responses: 648,000.

Hours Per Response: .500.

Total Burden Hours: 324,000.

D. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW, 2nd Floor, Washington, DC 20405-0001, telephone (202) 501-

4755. Please cite OMB Control No. 9000-0136 regarding
Commercial Item Acquisitions in all correspondence.

Dated: August 22, 2013.

Karlos Morgan,
Acting Director,
Federal Acquisition Policy Division,
Office of Governmentwide Acquisition Policy,
Office of Acquisition Policy,
Office of Governmentwide Policy.

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